

WALL STREET DEVELOPMENT CORP.
REAL ESTATE DEVELOPERS

May 4, 2023

Mr. Jack Wiley, Chairman
Walpole Conservation Commission
135 School Street
Walpole, MA 02081

RE: Notice of Intent - 15 Pinnacle Drive/DEP File No. 338-1287

Dear Mr. Chairman:

Following a review of the video recording of the Commission's public hearing on April 26, 2023, it is my understanding the Commission requested additional information regarding the above referenced Notice of Intent ("NOI"). Attached for the Commission's reference is the following information:

1. Recorded deeds to Wall Street Development Corp.;
2. Revised Site Plan dated March 6, 2023, Last Revised May 1, 2023;
3. Photos of demolition of Historic Bird Mill Complex; and
4. For information purposes only - Pending Superior Court Appeal/DEP Final Decision Regarding Pond v. River.

I look forward to answering any additional questions from the Commission at the next public hearing on May 10, 2023.

Thank you for your attention in this matter.

Sincerely,

WALL STREET DEVELOPMENT CORP.

Louis Petrozzi
Louis Petrozzi, President

cc. Paul McManus – Eco Tec

P.O BOX 272, WESTWOOD, MA 02090
TEL. 781 440 0306 CELL. 617 922 8700
EMAIL Lou@wallstreetdevelopment.com
www.wallstreetdevelopment.com



CERTIFY

N O T

Quitclaim Deed N O T

William P. O'Donnell
WILLIAM P. O'DONNELL, REGISTER

A N

O F F I C I A L

O F F I C I A L

John Hasenjaeger Pa/k/a **John T. Hasenjaeger**, Individually and having a mailing address of P.O. Box 661, Norwood, Massachusetts 02062 for consideration paid, and in full consideration in the amount of **Seventy-Five Thousand (\$75,000.00) Dollars** consideration grant to **Wall Street Development Corp.** a Massachusetts corporation having an address of P.O. Box 272, Westwood, Massachusetts 02090. **with Quitclaim Covenants**

The land in East Walpole, Massachusetts known 15 Pinnacle Drive and Land off Pinnacle Drive, East Walpole, Massachusetts 02032, more particularly described as follows:

Parcel 1

The land with the buildings thereon in Walpole, Norfolk County, Massachusetts shown as **Lot 24 A** on a plan of land entitled "Plan of Land in Walpole, MA, Scale 1"= 40' dated May 3, 2004 prepared by John R. Anderson & Associates and recorded at the Norfolk County Registry of Deeds as Plan. No. 21 of 2004 in Plan Book 528.

Parcel 2:

The land with the buildings thereon in Walpole, Norfolk County, Massachusetts shown as **Parcel A, Parcel B, Parcel C, and Parcel D** on a plan of land entitled "House #3 and House #7 Lot 27 and Lot 28 Pinnacle Drive Plan of Land in Walpole, MA, Scale 1"= 20' dated December 4, 2012 prepared by Glossa Engineering Inc., 46 East Street, Walpole, MA 02032 and recorded at the Norfolk County Registry of Deeds in Plan Book 618, Page 58.

For Grantors' title see deed recorded at the Norfolk County Registry of Deeds in Book 36363, Page 380

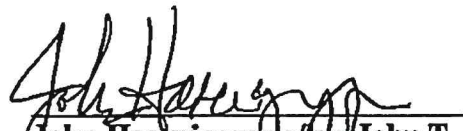
All rights of homestead and any and other interests are hereby released by the Grantor, and there are no other persons entitled to the protection of the homestead act. This property is vacant land and the Grantor never resided at the property is therefore not homestead property of the grantor.

Property Address: 15 Pinnacle Drive and Land Off Pinnacle Drive, East Walpole, Massachusetts 02032

N O T
A N
O F F I C I A L
C O P Y

N O T
A N
O F F I C I A L
C O P Y

Witness my hand and seal this 23rd day of March, 2023.



John Hasenjaeger a/k/a John T.
Hasenjaeger, Individually

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss.

March 23rd, 2023

On this 23rd day of March, 2023, before me, the undersigned notary public, personally appeared the above-named John Hasenjaeger a/k/a John T. Hasenjaeger who proved to me through satisfactory evidence of identification, which was a Massachusetts Driver's License, to be the person whose name is signed on the above signature line of the attached document, and acknowledged to me that he signed it voluntarily for its stated purpose and swore under the penalties of perjury to the facts stated herein and that he signed the foregoing instrument as his free act and deed before me.

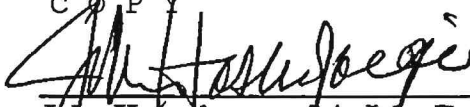

Notary Public: Thomas F. Brady
Commonwealth of Massachusetts
My Commission Expires: March 23, 2023



Quitclaim Deed

1

NOT
Witness my hand and seal this 23rd day of March, 2023.
OFFICIAL
COPY

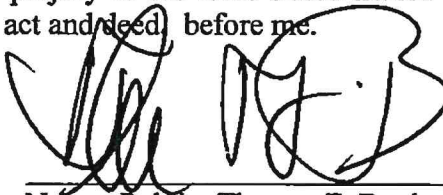
NOT
OFFICIAL
COPY

John Hasenjaeger a/k/a John T.
Hasenjaeger

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss.

March 23, 2023

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Notary Public: Thomas F. Brady
Commonwealth of Massachusetts
My Commission Expires: March 23, 2023













COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
C.A. NO. 2282cv00182**John T. Hasenjaeger,
Plaintiff,**

v.

**Department of Environmental Protection
and Martin Suuberg, Commissioner,
Defendants.****COMPLAINT AND PETITION
FOR REVIEW PURSUANT****TO****M.G.L. c.30A, §14(1)****and****M.G.L. c.231A, §§(1) and (2)****I. INTRODUCTION**

This matter involves an appeal pursuant to M.G.L. c.30A, §14(1) and M.G.L. c.231A, §§(1) & (2) filed on behalf of the John Hasenjaeger (“Plaintiff”) against the Department of Environmental Protection (the “Department”, “MassDEP” or “Defendant”) and Martin Suuberg, Commissioner (the “Commissioner”) for the issuance of a Final Decision by the Commissioner improperly finding that Plaintiff’s property, a 3.63-acre lot on Pinnacle Drive, which abuts the north side of Bird Pond in Walpole, Massachusetts (the “Property”), contains Riverfront Area (“RFA”).

Defendant Commissioner’s Final Decision, dated January 28, 2022, incorrectly upheld the findings of the Presiding Officer’s Recommended Final Decision (“RFD”) that the adjacent Bird Pond is part of the Neponset River and is not a pond, as a matter of law. The Final Decision approved a Superseding Order of Resource Area delineation (“SORAD”) of Bird Pond as a river under the Wetlands Protection Act, creating RFA on the Property.

Plaintiff is aggrieved as the Commissioner’s Final Decision improperly found that a portion of Plaintiff’s Property contains Riverfront Area subject to regulation.

Plaintiff seeks a reversal of the finding of the SORAD and requests a finding that Bird Pond is a pond and not a river and, therefore, there is no Riverfront Area on the Property.

II. PARTIES

1. Plaintiff, John T. Hasenjaeger, is an individual and owner of the Property and is aggrieved by the Final Decision as it restricts the development of the Property.
2. Defendant, Department of Environmental Protection, is a state agency established by M.G.L., c. 21A which has regulatory authority over certain activities in wetland resource areas proposed pursuant to M.G.L., c. 131, §40. MassDEP has promulgated regulations for work in wetland resource areas at 310 CMR 10.00. The regulations regarding activities in Riverfront Areas are found at 310 CMR 10.58 et seq. The Department's regulatory authority to hold adjudicatory hearings is found at M.G.L, c. 30A, §9.
3. Defendant, Martin Suuberg, is the Commissioner of the MassDEP designated by the regulations to act on the RFD and issue a Final Decision. His authority is found at M.G.L. c.21A.

III. THE RIVERS PROTECTION ACT AND THE DEPARTMENT'S REGULATIONS

4. The Rivers Protection Act (Chapter 258 of the Acts of 1996) hereinafter the "Rivers Act" was enacted in 1996 and incorporated as an amendment to the Massachusetts Wetlands Protection Act at M.G.L. c.131, §40 (the "Wetlands Act").
5. The Rivers Act created a new wetland resource area, Riverfront Area, to be regulated under the Wetlands Protection Act. The Riverfront Area boundary runs 200 feet landward from the high-water mark of a perennial stream or river which runs throughout the year.

6. Section 18 of Chapter 258 of the Acts of 1996 contains the statutory definition of a river as “any natural flowing body of water that empties to any ocean, lake, pond or other river and which flows throughout the year”.
7. Rivers also include streams if they flow throughout the year and are deemed perennial pursuant to the Department’s regulations.
8. The Rivers Act creates a new wetland resource area known as Riverfront Area which is defined as “that area of land situated between a river’s mean annual high-water line and a parallel line located two hundred feet away, measured outward horizontally from the river’s mean annual high-water line”.
9. The Rivers Act granted the Department with the authority to adopt rules and regulations to implement its provisions.
10. The Department promulgated regulations in 1996, further defining the riverine characteristics of flowing perennial and intermittent streams and created performance standards for conducting work in Riverfront Area at 310 CMR 10.58.
11. The regulations also added a new class of rivers not in the statute and called them “major rivers”.
12. Ponds are regulated differently than rivers and streams under the MassDEP regulations.

IV. THE PROPERTY AND THE RIVERFRONT AREA

13. Plaintiff owns a 3.63-acre lot of Pinnacle Drive which abuts the north side of Bird Pond in Walpole, MA (the “Property”).
14. Bird Pond is identified on the current USGS Map as a pond. Included in Plaintiff’s Property is land within 200 feet of the Bird Pond, an impoundment. Bird Pond does not

share the riverine characteristics of the Neponset River based upon the affidavits submitted by Plaintiff's experts.

15. As part of the Administrative Record, Plaintiff provided substantial evidence that there is no unidirectional flow associated with Bird Pond or other riverine characteristics associated with Bird Pond. This is a question of fact, not a question of law.
16. The factual and legal determination of whether the Property contains Riverfront Area is made by the Walpole Conservation Commission (the "Commission") and the MassDEP as part of a regulatory process under the Wetlands Protection Act and the MassDEP regulations.
17. As part of the Property development process and in order to determine if there is Riverfront Area on the Property, Plaintiff filed an Abbreviated Notice of Resource Area Delineation (ANRAD) to establish the boundary and extent of wetland resource areas on its Property with the Walpole Conservation Commission under the MassDEP regulations.
18. The ANRAD is a filing to determine the extent and existence of wetland resource areas. Plaintiff's ANRAD requested a finding that Plaintiff's land did not contain Riverfront Area associated with a Bird Pond because it is not a perennial stream or river.
19. Plaintiff's ANRAD was supported by substantial evidence that Bird Pond is an impoundment and does not have physical characteristics of a stream under the Department's regulations. The Commissioner issued an Order of Resource Area Delineation in response to the ANRAD.
20. The Commission disagreed with Plaintiff finding that Bird Pond is part of the Neponset River and that the Property contains Riverfront Area.

21. Plaintiff appealed the Commission findings to MassDEP with the Request for a Superseding Order and Resource Area Delineation (“SORAD”) from the Department. The SORAD is a state permit issued following a de novo review by the Department that affirms the Commission decision or overturns the Commission decision.
22. Plaintiff presented compelling evidence to the Department that there are no riverine characteristics associated with the Bird Pond impoundment.
23. The Defendant MassDEP did not give weight to the physical characteristics required by the regulations to become a river and instead found that it was part of the Neponset River, a “major river”, as a matter of law. The SORAD affirmed the Riverfront Area on the Property.
24. Plaintiff appealed the DEP SORAD and requested an Adjudicatory Hearing from the Department. The Department opened the Adjudicatory Hearing.
25. After the submission of the Department’s Motion for Summary Decision, claiming that Bird Pond was a river as a matter of law, the Plaintiff, submitted an Opposition to the Department’s Motion for Summary Decision with factual affidavits from two (2) experts with substantial evidence that Bird Pond is an impoundment, without riverine characteristics and not a part of the Neponset River.
26. The Presiding Officer granted the Department’s Summary Decision motion affirming the Department’s SORAD that the Property contained Riverfront Area as part of the Neponset River as a matter of law, without a trial, with the issuance of a Recommended Final Decision (“RFD”). The RFD was forwarded to the Commissioner for approval or rejection.
27. On January 28, 2022, the Commissioner affirmed the RFD with a Final Decision.

28. Plaintiff hereby appeals the Final Decision.
29. Defendant's Final Decision improperly ignored the regulatory language that distinguishes ponds from intermittent streams or perennial streams and finds that ponds can exist within a river but are not part of the river as a matter of fact.

COUNT I
**The Final Decision Finding That Bird Pond Is a Part of The Neponset River
Constitutes Error**

30. Plaintiff hereby restates and incorporates the facts and allegations contained in paragraphs 1-29 above.
31. There is overwhelming factual evidence in the Administrative Record that Bird Pond does not have riverine characteristics and should not be considered part of the Neponset River. The Commissioner's first error was in granting Summary Decision when there were questions of fact regarding the riverine characteristics and surface water elevations.
32. There is uncontroverted evidence that there are no physical riverine characteristics associated with Bird Pond adjacent to the Property.
33. Defendant Commissioner committed a second error of law when he found that the prior Adjudicatory Hearings focusing on major rivers controlled this case.
34. Defendant Commissioner's Final Decision improperly found as a matter of law that there is no discretion in viewing the physical characteristics of Bird Pond or the Neponset River alleging the Neponset River is a "major river" under the MassDEP regulations.
35. Defendant Commissioner's reliance on In the Matter of Annese was error as Annese was decided on a different definition of major river and on a different set of facts.
36. The Defendant Commissioner should have taken testimony on the fact that the regulations under Annese only regulated the length of a river and that Annese found a

hydrologic connection between the water body and the Concord River as a matter of fact.

The waterbody in Annese, after hearing, was not found to be an impoundment of the Concord River and it was found that the waterbody and the Concord River shared surface water elevations. Uncontroverted testimony offered by affidavit by Plaintiff found that the surface water elevation of Bird Pond is clearly different from the other segments of the Neponset River.

37. The Commissioner's reliance upon the Adjudicatory decision of the In the Matter of Colby was also error because there was visible stream flow and the surface water elevations were the same. in the Colby matter. Plaintiff presented expert testimony that there is no visible stream flow associated with Bird Pond and the surface water elevations of the Neponset River and Bird Pond are different.
38. The Commissioner's fourth error was his finding that 310 CMR 10.58(2)(a)(1)(h) only applies to rivers, and not "major rivers".
39. Defendant Commissioner's reliance on cases that have factual and legal distinctions from this case was wrong as a matter of law.

COUNT II

The Final Decision Was Not Supported by Substantial Evidence And There Are Questions of Fact

40. Plaintiff hereby restates and incorporates the facts and allegations contained in paragraphs 1-39 above.
41. Plaintiff presented substantial evidence that Bird Pond is separate from the Neponset River and has no riverine characteristics.
42. Plaintiff presented substantial evidence from its experts that there is a question of fact as to the assumption that Bird Pond is connected to the Neponset River.

43. Defendant did not have substantial evidence to find that the Department had authority to distinguish major rivers from rivers in its regulations within a different definition.

COUNT III
The Decision Was Arbitrary and Capricious

44. Plaintiff hereby restates and incorporates the facts and allegations contained in paragraphs 1-43 above.
45. Defendant's finding that the regulations control the review of the Property is designed to retain the Department's improper regulatory interpretation and support its ad hoc agenda to regulate any stream that has flowing water throughout the year as a river even when substantial portions are not flowing throughout the year.
46. Defendant's findings were arbitrary and capricious because they applied different standards to Bird Pond than other rivers.
47. Defendant's findings were arbitrary and capricious because the Commissioner applied the incorrect interpretation.

COUNT IV
Declaratory Relief
The Definition of a Major River Does Not Include Ponds

48. Plaintiff hereby restates and incorporates the facts and allegations contained in paragraphs 1-47 above.
49. There is an actual controversy between the parties as to their respective rights and duties and specifically as to the legal authority of MassDEP to depart from its statutory authority to create a new class of "major rivers" in its regulations, when said major rivers were counter to and inconsistent with the language of the Rivers Protection Act.

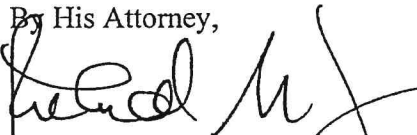
50. Defendant did not have the authority to create a new class of major rivers in its regulations when said regulations were counter to and inconsistent with the language of the Rivers Protection Act. The new class of “major rivers” aggrieves Plaintiff.
51. Defendant’s regulations creating major rivers exceeded its authority to set a different standard than for other rivers under its regulations.
52. The Plaintiff has exhausted its administrative remedies.
53. Declaratory relief is necessary to protect the rights and interests of Plaintiff.

RELIEF SOUGHT

1. Plaintiff requests that the Court find that as a matter of law Bird Pond is a pond and not part of the Neponset River and that Summary Decision should not have been granted.
2. Plaintiff requests the Court find that the Commissioner’s decision to support the decision was arbitrary and capricious, an error of law, lacking in substantial evidence and violated M.G.L. c.30A, §14 and M.G.L. c.231A, §§(1) and (2).
3. Plaintiff requests the Court grant Declaratory Relief and find that the regulations adopted by the Department to create a category of “major rivers” to implement the Rivers Protection Act was beyond the Department’s authority and shall be rescinded.
4. Plaintiff requests such other relief at law or in equity as the Court may allow.

Respectfully Submitted,

John T. Hasenjaeger,
By His Attorney,

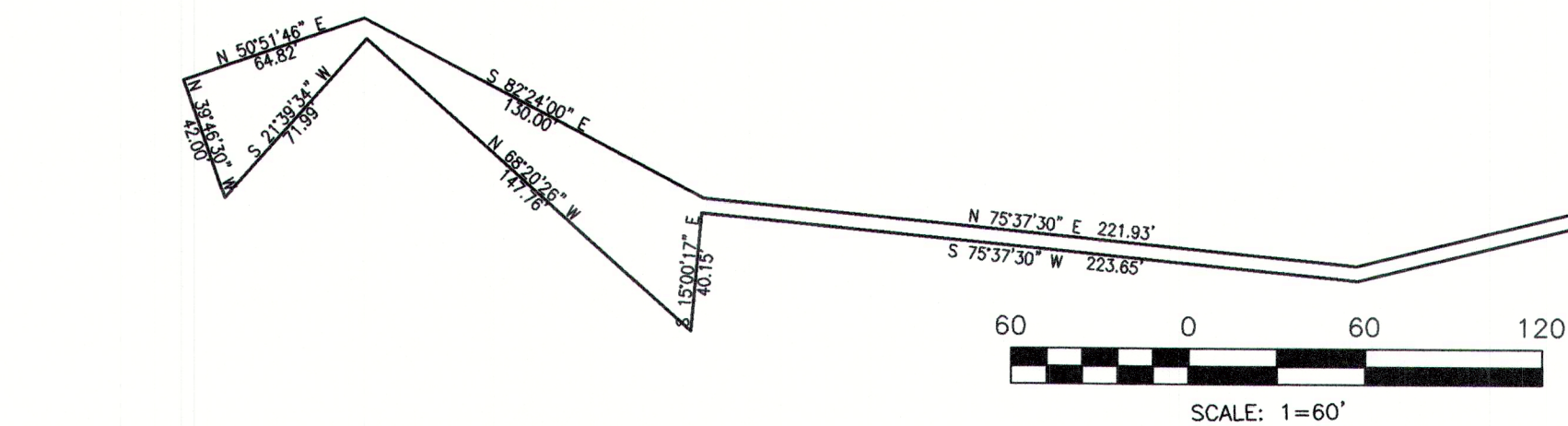


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rnylen@ldnllp.com

Dated: February 28, 2022

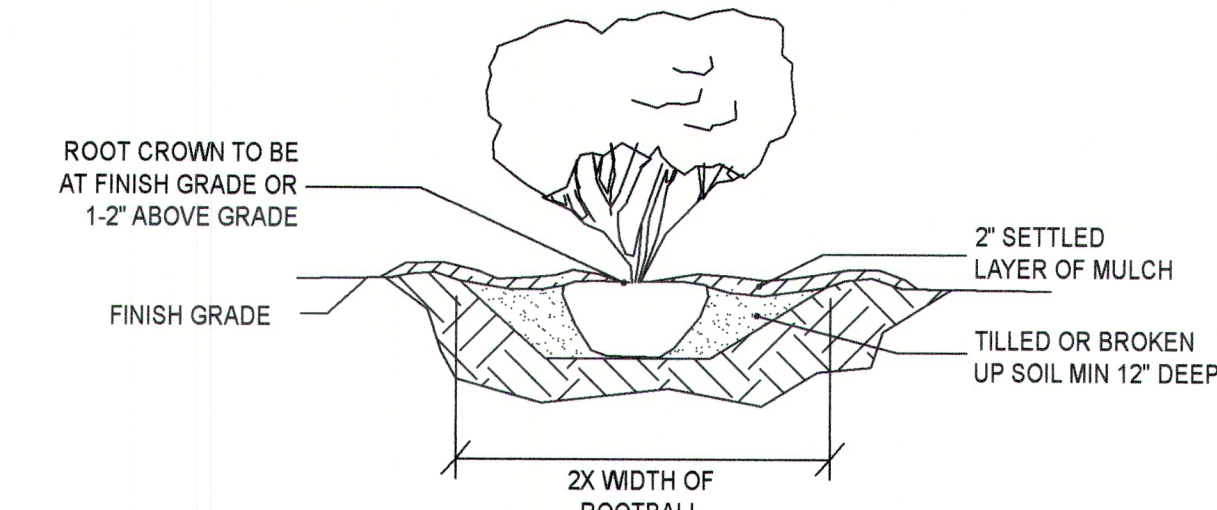
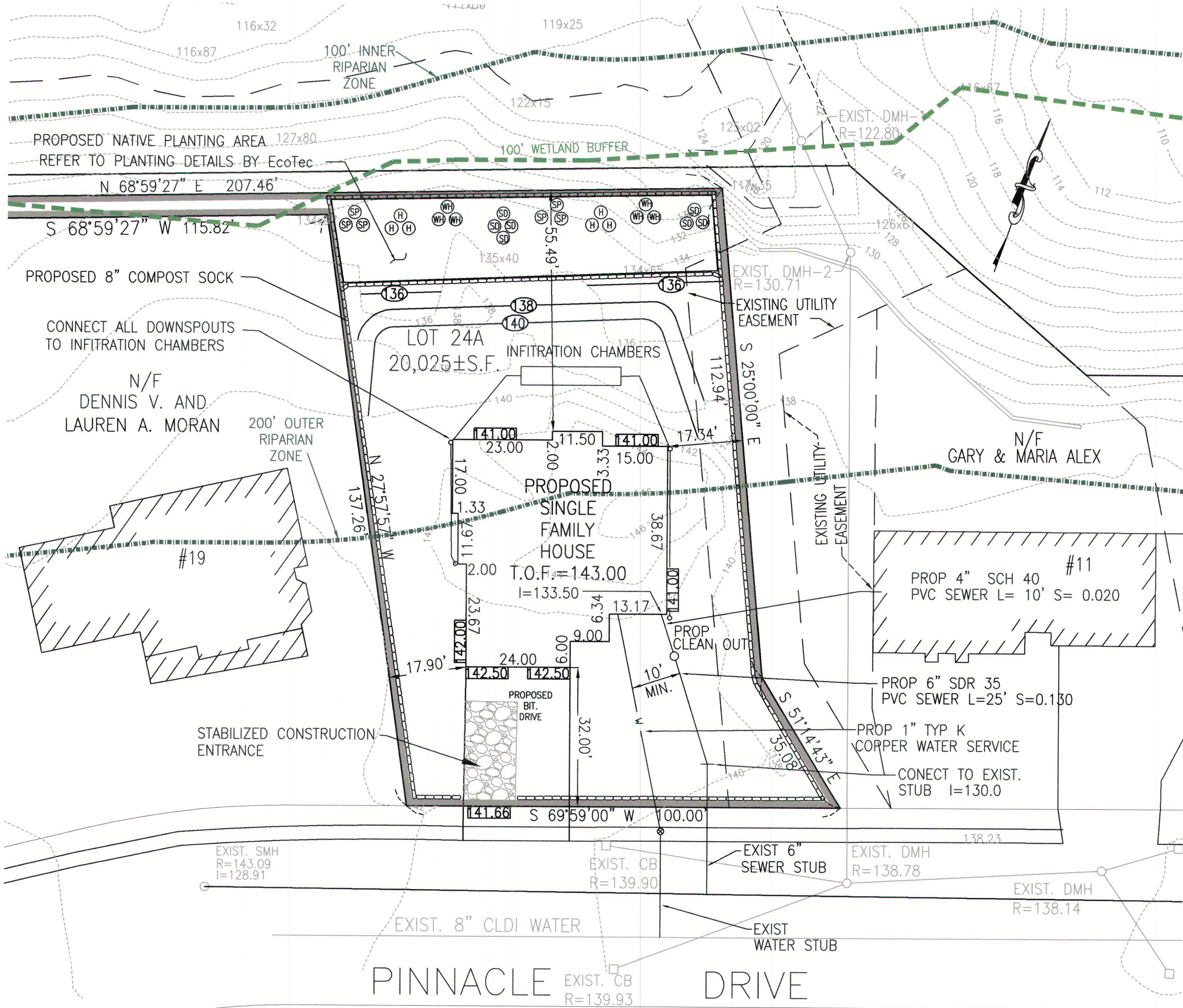
G:\Shared drives\Nylon\Chip\Petrozzi\DEP 2021-024\Appeal 2022\Appeal 30A 02-25-22.docx



NATIVE PLANTING AREA SCHEDULE			
COMMON NAME	SCIENTIFIC NAME	SIZE	QUANTITY
HAZELNUT (H)	CORYLUS AMERICANA	ONE GAL.	6
WITCH HAZEL (WH)	HAMAMELIS VIRGINIANA	ONE GAL.	6
SWEET PEPPERBUSH (SP)	CLETHRA ALNIFOLIA	ONE GAL.	6
SILKY DOGWOOD (SD)	CORNUS AMOMUM	ONE GAL.	7

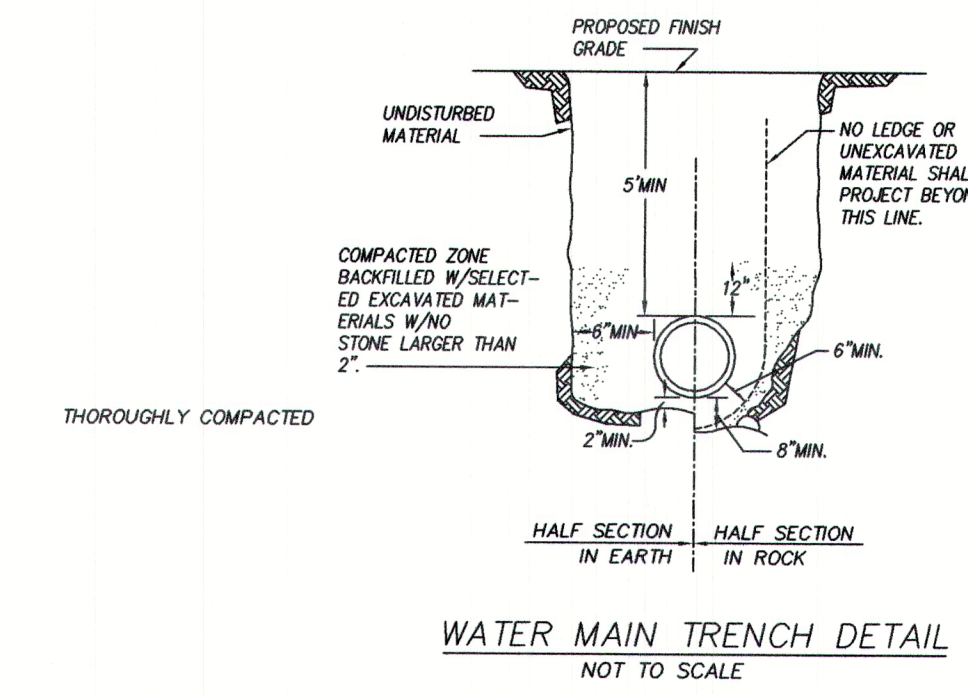
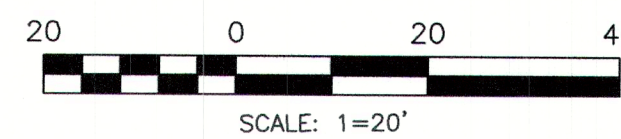
PROPOSED PLANTINGS AND NATURALIZATION SPECIFICATIONS
 WITHIN THE APPROXIMATELY 1,586 S.F. AREA OUTLINED IT IS PROPOSED TO NATURALIZE THE AREA WITH TOPSOIL AND NATIVE PLANTINGS. THE AREA WILL RECEIVE A MINIMUM OF 6-INCHES OF TOPSOIL (ADDITIONAL MINERAL FILL WILL BE REQUIRED TO FILL VOIDS AROUND EXISTING RUBLE). THE AREA WILL BE SEEDED WITH NATIVE UPLAND SEED MIX SUCH AS NEW ENGLAND WETLAND PLANTS, NEW ENGLAND CONSERVATION / WILDLIFE MIX, NEW ENGLAND SEMI SHADE GRASS AND FORBS MIX, OR NEW ENGLAND WILD FLOWER MIX. FOLLOWING SEEDING, THE AREA WILL BE PLANTED WITH A MINIMUM OF 25 NATIVE WOODY PLANTS CONSISTING OF SAPLINGS OR SHRUBS FROM THE FOLLOWING LIST (OR SUBSTITUTES APPROVED BY THE CONSERVATION COMMISSION).

SPECIES, SIZE, SPACING	NUMBER
SHRUBS; MIN 1 GAL. CONTAINER; HAZELNUT (CORYLUS AMERICANA) MEADOWSWEET (SPIREA LATIFOLIA) Highbush Blueberry (VACINUM CORYMBOSUM) Gery Dogwood (CORNUS RACEMOSA) Nannyberry (VIBURNUM LENTAGO) Witch Hazel (HAMAMELIS VIRGINIANA) Maple Leaf Viburnum (VIBURNUM ACREIFOLIUM) Sweet Pepper Bush (CLETHRA ALNIFOLIA) Silky Dogwood (CORNUS AMOMUM).	25 *COMPRISED OF AT LEAST THREE SPECIES, WITH A MINIMUM OF SPECIMENS OF EACH SELECTED SPECIES

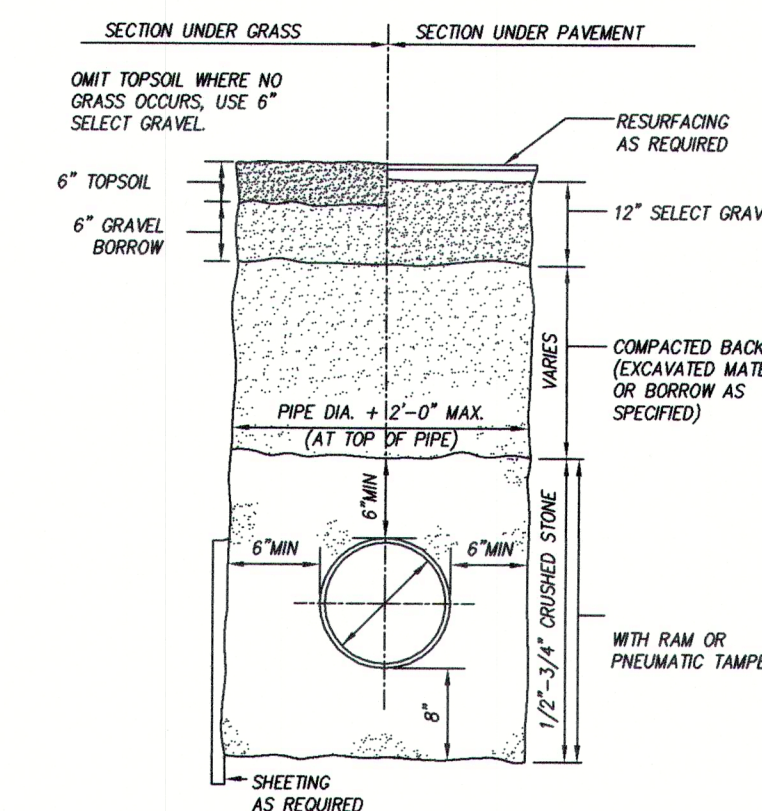


TYP. SHRUB PLANTING:
 INDIVIDUAL PLANTING HOLE
 NOT TO SCALE

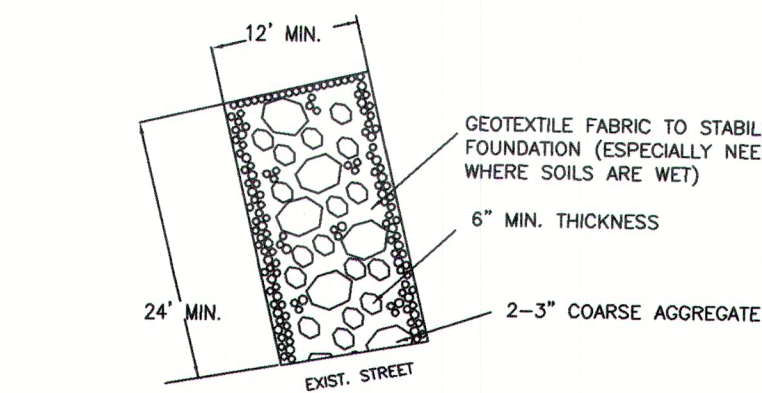
NO.	DATE	REVISION
1.	5-1-23	PER TOWN COMMENTS



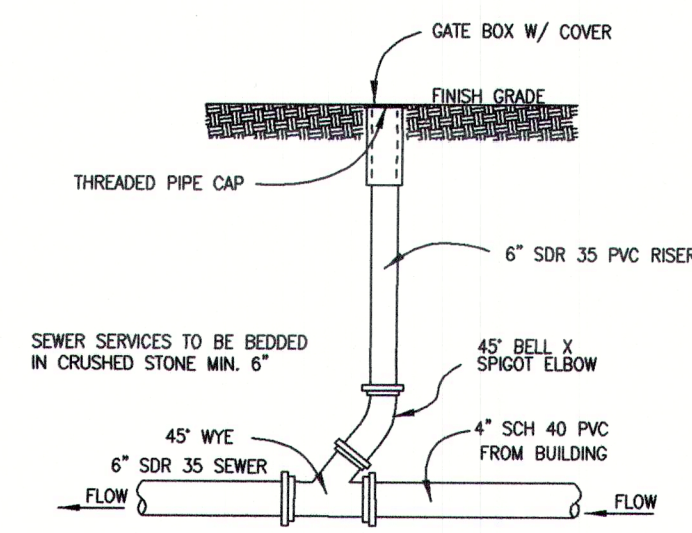
WATER MAIN TRENCH DETAIL
 NOT TO SCALE



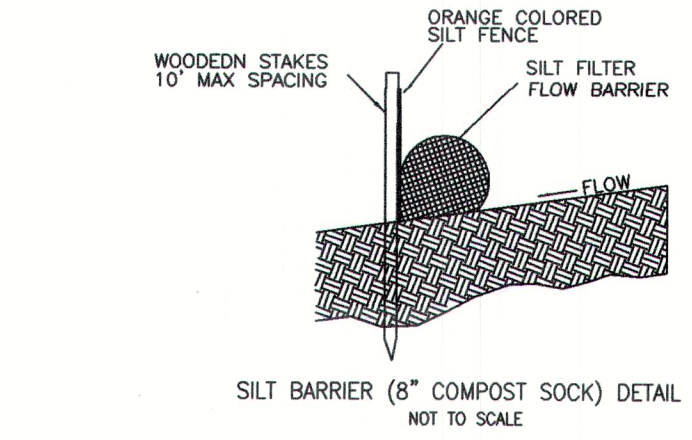
TYPICAL SEWER TRENCH DETAIL
 NOT TO SCALE



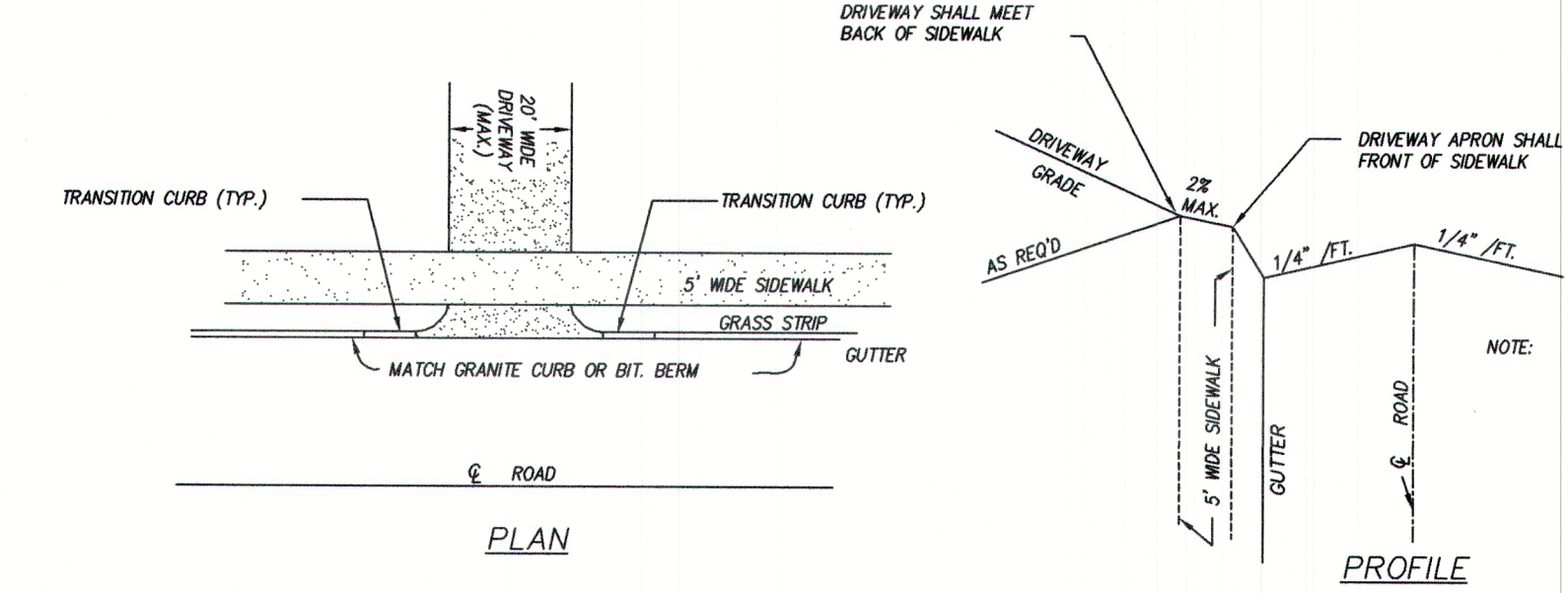
STABILIZED CONSTRUCTION ENTRANCE
 NOT TO SCALE



SEWER CLEANOUT DETAIL (C/O)
 NOT TO SCALE



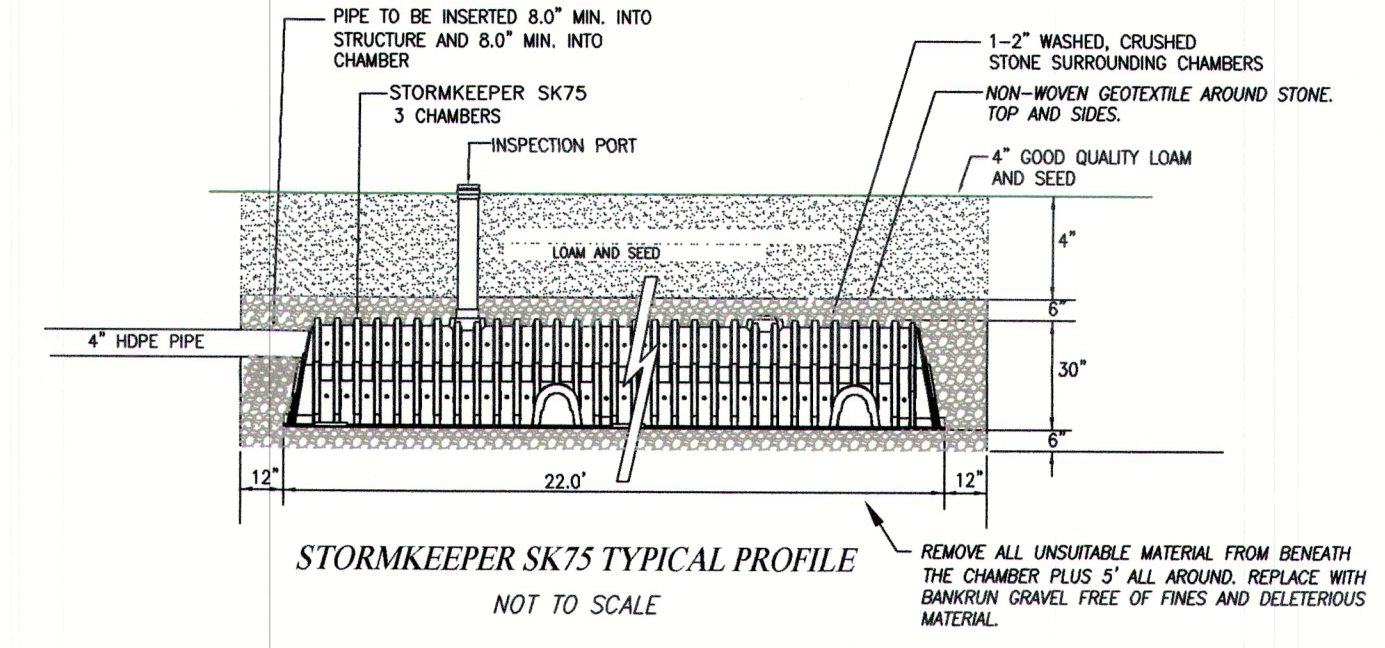
SILT BARRIER (6" COMPOST SOCK) DETAIL
 NOT TO SCALE



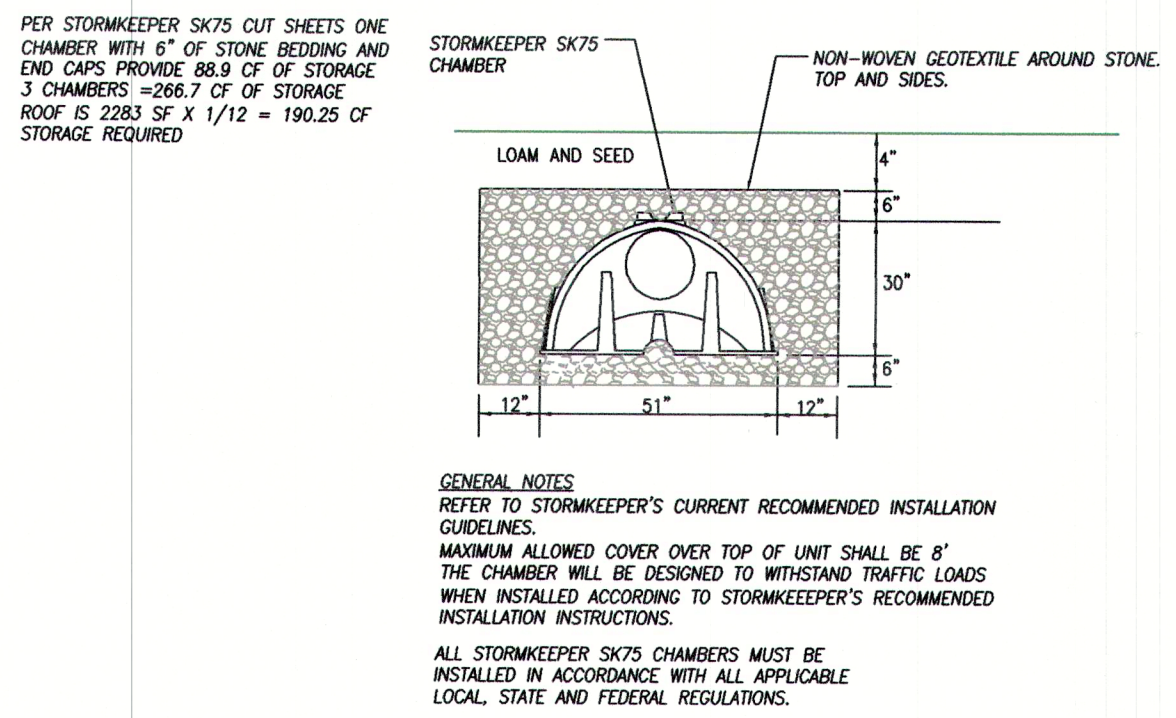
TYPICAL MINOR DRIVEWAY DETAIL
 (NO SCALE)

EROSION CONTROL BARRIER = PROPOSED LIMIT OF WORK = 540 L.F.
 PROPOSED WORK AREA IN RIVER FRONT:
 PROPOSED HOUSE AND LANDSCAPING = 4,652 S.F.
 PROPOSED NATIVE PLANTING AREA = 1,586 S.F.
 TOTAL WORK IN RIVERFRONT AAREA= 6,238 S.F.

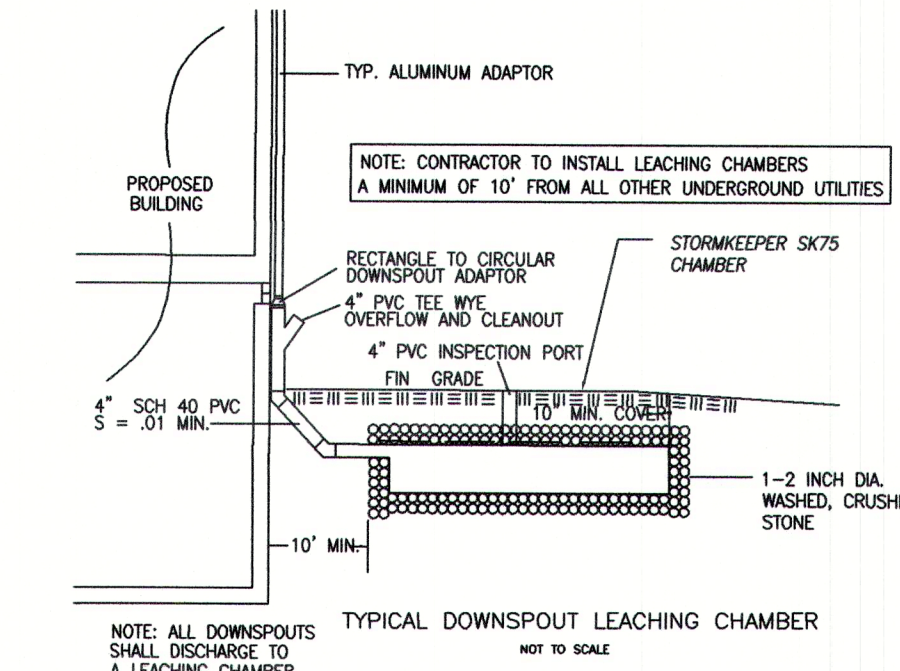
- NOTES
- 1) ALL UNDERGROUND UTILITIES MAY NOT BE SHOWN ON THIS PLAN AND THE LOCATION OF THE UNDERGROUND UTILITIES SHOWN MAY VARY FROM THEIR FIELD LOCATION. THE CONTRACTOR SHALL VERIFY THE EXISTENCE AND LOCATION OF ALL UNDERGROUND UTILITIES PRIOR TO THE CONSTRUCTION. THE CONTRACTOR SHALL NOTIFY DIG SAFE AT LEAST 72 HOURS PRIOR TO THE START OF THE CONSTRUCTION.
 - 2) ALL CONSTRUCTION SHALL CONFORM TO THE STANDARDS AND SPECIFICATIONS OF THE TOWN OF WALPOLE PUBLIC WORKS DEPARTMENT.
 - 3) THE CONTRACTOR MUST NOTIFY THE WALPOLE ENGINEERING DIVISION 3 DAYS PRIOR TO CONSTRUCTION TO SCHEDULE INSPECTIONS FOR THE UTILITY SERVICES.
 - 4) ALL DISTURBED AREAS TO BE STABILIZED WITH LOAM AND SEED, BARK MULCH AND PLANTINGS.
 - 5) EROSION CONTROL TO REMAIN UNTIL THE SITE IS THOROUGHLY STABILIZED.



STORMKEEPER SK75 TYPICAL PROFILE
 NOT TO SCALE



STORMKEEPER SK75 TYPICAL CROSS SECTION
 NOT TO SCALE



TYPICAL DOWNSPOUT LEACHING CHAMBER
 NOT TO SCALE

GENERAL RESIDENCE (GR)
 FRONT YARD 30 FT.
 SIDE YARD 10 FT.
 REAR YARD 30 FT.

OWNER/APPLICANT
 WALL STREET DEVELOPMENT CORP.
 P.O. BOX 272
 WESTWOOD, MA 02090
 DEED REFERENCE
 BOOK 41109, PAGE 423
 PLAN REFERENCE
 PLAN BOOK 528, PAGE 21 OF 2004
 ASSESSORS PARCELS
 MAP 19 LOT 182

LOT 24A
 #15 PINNACLE DRIVE
 PLAN OF LAND
 IN
 WALPOLE, MA
 SCALE: 1"=20' MARCH 6, 2023
 GLOSSA ENGINEERING INC.
 46 EAST STREET
 EAST WALPOLE, MA
 508-668-4401

